the trial The Court held that, with reference to the exercise by the Court of Appeal of the power to admit fresh evidence conferred by Order 58 Rule 4 a patent action is in the same position as any other action so that the observations of the Lords Justices are applicable to a case such as the present one. They held that the Court of Appeal had jurisdiction to admit such evidence, but had always been and ought to be very cautious in how it acted under the rule. They refused the application not on the ground that the evidence should have been available at the trial but on other grounds such as balance of convenience and that no irreparable damage would be done by such refusal. Rigby, L.J. concluded his judgment with these words:

> "Reserving full power in special cases to grant such relief as is here prayed, I do not think such a case has been made out as ought to induce us to grant it."

The English authorities thus establish that whilst a Court of Appeal undoubtedly has full power to admit fresh evidence it should always be cautious in doing so and particularly so in a case where such evidence could have been available at the trial. In such a case it will scrutinise very closely the reasons why such evidence was not adduced at the trial and will require to be satisfied that there are genuine and very special grounds for admitting it on the hearing of the Appeal the propriety or otherwise of admitting it depending on the circumstances of each individual case.

I entertain no doubt in my mind that in the present case there are such very special grounds as will justify us in admitting the new evidence. It is evidence which is vitally necessary for the decision of the Appeal and which was overlooked in the Court below because a recent and very material decision of the Court of Appeal had not come to the notice of counsel. It is evidence which can admit of no dispute and which is open to none of the very cogent objections which have led the Courts to reject new evidence in the reported cases.

Once this evidence is admitted it seems to me the Appeal must succeed. The learned trial judge says that if that evidence had been before him it is unlikely that he would have made the order and I do not think that the order can possibly stand now that it is proved that the required endorsement was omitted. I have had the advantage of seeing the judgment of the learned Acting Chief Justice with which I am in entire agreement and I do not feel that I can usefully add anything to what he has said on this point.

I agree that the Appeal should be allowed and I concur in his proposed order as to costs.

Appeal allowed.

Solicitors for Appellants—
Rodyk & Davidson.

Solicitors for Respondents—
Donaldson & Burkinshaw.

[ORIGINAL CIVIL JURISDICTION]
TERRELL, J.
July 18, 1935.

IN THE MATTER OF THE INTENDED MARRIAGE BETWEEN LEE KENG GIN AND CATHERINE WONG KIM LAN.

[SINGAPORE ORIGINATING PETITION No. 20 of 1935]

Ordinance No. 60 (Christian Marriage), Section 39—overriding refusal of guardian to consent to marriage.

In a proper case the refusal of the guardian of an infant to consent to an infant's marriage which is required under the Christian Marriage Ordinance can be disregarded by the Marriage Registrar even in a proper case where the guardian is the father of the infant. The Supreme Court if necessary will interfere in a proper case and in doing so its chief consideration is the interest of the infant.

Originating Petition.

The facts and arguments sufficiently appear from the Judgment.

N. A. Mallal for Applicant.

Chong Thutt Pitt for Respondent, father of the infant.

Cur. Ad. Vult.

TERRELL, J.—The Petitioner Lee Keng Gin is a Presbyterian Christian and wishes to contract a marriage with one Catherine Wong Kim Lan who is a minor of 18 years of age, and is the daughter of Roman Catholic parents. Catherine's father approved of the proposed marriage provided that it took place in a Roman Catholic Church, and according to the rites of that church. The Petitioner accordingly interviewed various Roman Catholic priests but they all refused to solemnize a marriage between a Chinese Catholic and a Chinese Christian who was a non-catholic. Although such marriages are frequently solemnized by Roman Catholic priests in England and apparently in Singapore when the parties are not Chinese, this is entirely a matter within the discretion of the Minister of Religion.

The matter was urgent as Catherine was pregnant, and accordingly the parties were desirous of contracting a civil marriage. For the purpose of any marriage by a minor under the provisions of Ordinance No. 60 (Christian Marriage) the consent of the father is ordinarily required, and to this proposed marriage the father refused his consent, not apparently because he objected to the Petitioner as his son-in-law, but because the priests of his church threatened him with excommunication if he gave such consent. Accordingly when the matter came before Mr. Forrer, the Marriage Registrar, he refused the issue of the necessary certificate. The Petitioner then applied to the Supreme Court under Section 39 of the Ordinance asking in effect for an Order that the Marriage Registrar issue the certificate notwithstanding the father's refusal to consent to the marriage.

Two questions arise for decision. The first is whether on the true construction of the Ordinance the father's refusal can be over-riden and the second is whether in the circumstances of this case the Court is satisfied that the father's refusal "ought not to obstruct the issue of the certificate" [Section 38 (2)].

As regards the construction of the Ordinance the point is not free from difficulty, as there is an apparent inconsistency between section 8 which provides that where a consent is necessary and such consent other than that of the father, is withheld without just cause, the parties to the intending marriage may petition the Supreme Court and such court may examine the allegation in the petition, and if such marriage appears proper the Supreme Court shall declare such marriage to be a proper marriage. Section 8 falls under Part II of the Ordinance which is headed "Consents," and deals with consents generally, whether the marriage is to be performed by a Minister of Religion or otherwise. *Prima facie* therefore the father has an absolute right of veto. Sections 7 and 8 of the Ordinance correspond with Sections 16 and 17 of the English Marriage Act of 1823. These sections have in England been repealed by section 9 of the Guardianship of Infants Act 1925. As regards section 38 of the Ordinance this corresponds with section 13 of the Marriage Act of 1836 which legalised civil marriages in England. By virtue of the provisions of section 38 (2) of the Ordinance the refusal of "any person whose consent is required" can be over-ruled by the Marriage Registrar "if he is satisfied that it ought not to obstruct the issue of the certificate" and section 39 gives the parties the right to petition the Supreme Court against the Marriage Registrar's refusal to issue the certificate. It is to be noted that sections 38 and 39 come under Part VI of the Ordinance which is headed "Marriage solemnized by or in the presence of Marriage Registrar," and under section 38 the refusal of the father is treated on the same basis as the refusal of any other person whose consent is required under section 7.

On reading the Ordinance as a whole I think it is clear that the procedure indicated in section 8 is limited to the case of marriages solemnized by a Minister of Religion, whereas section 38 governs the procedure in the case of marriages solemnized by the Marriage Registrar. This view is supported by section 19 of the Ordinance which prohibits a Minister of Religion from solemnizing a marriage if it is prohibited by any one whose consent is required under section 7. He cannot issue the certificate "until he is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition." In the case of a marriage of a minor by a Minister of Religion not only the father but any guardian can prohibit the marriage, although under section 8 the refusal of any guardian other than the father can be over-ruled by the Supreme Court.

In the case of civil marriages, however, the Marriage Registrar has not, like a Minister of Religion, to consider merely whether the person prohibiting the marriage has lawful authority for so doing and what he has to consider is whether the protest of the guardian "ought to obstruct the issue of the certificate." These words are not qualified in any way and obviously give him a very wide discretion. I conclude therefore that in a civil marriage the Marriage Registrar can disregard the protest even of the father in a proper case.

Then as to whether or not this is a proper case for the courts to interfere, the court in exercising its discretion must of course consider the interests of the parties free from any denominational prejudice. The High Court, inheriting as it does the jurisdiction of the Court of Chancery in England, is especially charged with safeguarding the interests of infants. In considering the facts of this case from this point of view there can be little doubt that it is of paramount importance to the minor that this marriage should take place, and I have little doubt that the Marriage Registrar would have come to the same conclusion but for the difficulties of construction arising upon the Ordinance itself. I therefore direct the Marriage Registrar to issue the certificate required by section 36.

Petition allowed.

Solicitors for the Applicant—*Mallal & Namazie.*

Solicitors for the Respondent—*Shelley-Thompson & Demuth.*

[APPELLATE CIVIL JURISDICTION]
MURISON, C.J., THORNE & MUDIE, JJ.
January 14, 1930.

TAN SOO LOCK

v.

TAN JIAK CHOO AND ANOTHER.

[SINGAPORE CIVIL APPEAL No. 26 of 1930]

The principles on which costs will be awarded against or to Defendant-Trustees, discussed and applied.

Per Thorne J. Trustees have a right to prefer an appeal to the Court of Appeal on the question of costs only (without leave) notwithstanding the provisions of Section 1123 of the Civil Procedure Code (now Section 22 (1) of the Courts Ordinance 1934).

Appeal to the Court of Appeal, consisting of Sir William Murison, C.J., Thorne, J., and Mudie, J.

The facts and arguments are fully set out in the Judgment of Thorne, J.

Eber and *Stuart* for Plaintiff.

John Laycock for 1st Defendant.

Williamson for 2nd Defendant.

Cur. Ad. Vult.

MURISON, C.J.—I have had the opportunity of reading the judgment of Thorne, J. in this appeal. I agree with the conclusions at which he arrives and the reasons by which he arrives at them.

An appeal in the matter of costs can be dealt with either on a general view of the whole case (as is stated in a recent judgment of Lord